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AVOIDING LITIGATION THROUGH
THE NEW NBA COLLECTIVE
BARGAINING AGREEMENT*

D'Bria Bradshaw

HAS THE NATIONAL BASKETBALL ASSOCIATION LOST ITS COMPETITIVE TOUCH?: INCREASING COMPETITIVE BALANCE AND PARITY AND AVOIDING LITIGATION THROUGH THE NEW NBA COLLECTIVE BARGAINING AGREEMENT¹

D'Bria Bradshaw²

INTRODUCTION

Over the past few years the competitive balance and parity within the National Basketball Association (“NBA”) have been at an all-time low.³ Competitiveness and parity may seem like low-lying fruit when viewed in light of the NBA’s history of litigation and allegations of discrimination.⁴ Nevertheless, when the Miami Heat signed the “Big 3” (LeBron James, Dwyane Wade, and Chris Bosh) to its franchise during the 2010-2011 season,⁵ the NBA entered a new era with new priorities that may be best served by avoiding future litigation.

The main competitive balance issue in the current NBA is the move by 2014 Most Valuable Player (“MVP”) Kevin Durant to the 2015 Champion Golden State Warriors.⁶ NBA commissioner, Adam Silver, is an advocate of competitive balance in the league⁷ and has criticized Durant for joining the Warriors because some acknowledge the league is the healthiest when all teams are solvent, profitable and competitive.⁸

As to parity, in October 2014, the NBA signed over television media rights to Turner Broadcasting and ESPN for \$24 billion.⁹ Since the NBA is a private company, its financial statements are not publicly available.¹⁰ The league's annual television revenues increase from \$31 million per team to \$89 million per team on average over the life of the new deal.¹¹ This windfall should play a role in players’ contract percent increases and the salary cap.¹²

¹ A new collective bargaining agreement was agreed upon between the National Basketball Association and the National Basketball Players Association (“NBPA”) before the publishing date of this note.

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³ Tom Ziller, *The NBA Is No More Competitively Balanced Than It Was 15 years ago*, SB NATION (February 24, 2014), <http://www.sbnation.com/2014/2/24/5442184/nba-competitive-balance-adam-silver-lockout>.

⁴ *Id.*

⁵ *Heat Stars Sign Six-Year Deals*, ESPN (July 10, 2010), <http://www.espn.com/nba/news/story?id=5368003>.

⁶ *Kevin Durant to Sign With Warriors*, ESPN (July 5, 2016), http://www.espn.com/nba/story/_/id/16759826/kevin-durant-announces-sign-golden-state-warriors.

⁷ See AJ Neuharth-Keusch, *Adam Silver Backs Kevin Durant, NBA's “Competitive Balance,”* USA TODAY (May 31, 2017), <https://www.usatoday.com/story/sports/nba/2017/05/31/adam-silver-backs-kevin-durant-stance-nba-parity-problem/102353372/>.

⁸ See Tim MacMahon, *Adam Silver: Warriors’ signing of Kevin Durant shows CBA needs change*, ESPN (July 13, 2016) http://www.espn.com/nba/story/_/id/17032907/adam-silver-says-kevin-durant-signing-golden-state-warriors-shows-need-change-league-cba.

⁹ Scott Bukstein, *Preparing for Another Round of Collective Bargaining in the National Basketball Association*, 22 JEFFREY S. MOORAD SPORTS L.J. 373 (2015).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

This paper will begin with a discussion of the previous lawsuits that delineated the boundaries of NBA player versus league action: *Robertson v. National Basketball Association*¹³; *Wood v. National Basketball Association*¹⁴; and *National Basketball Association v. Williams*.¹⁵

The second section will examine the issues of competitive balance and parity against the letter of the current collective bargaining agreement (“CBA”).¹⁶ Specifically, I will suggest what provisions in the CBA should be modified for the potential opt out, the pros and cons to opting out of the current CBA, what the NBA has to lose or gain, and what the players have to lose or gain.¹⁷ Additionally, I will explain how preventing the formation of powerhouse teams like the current Golden State Warriors and 2010 Miami Heat team will increase competitive balance and parity within the NBA.¹⁸

The final section will describe the legal remedies available to both players and teams through the National Labor Relations Board (“NLRB”), including decertification and disclaimer of interest,¹⁹ and the likelihood that either side will invoke those remedies in a labor dispute.

I. HISTORY OF LITIGATION BETWEEN THE LEAGUE AND PLAYERS

Bob Cousy, Boston Celtics All-Star, began organizing players in 1957, seeking their input and support for a formal union to represent players’ interests.²⁰ As described by the NBPA:

In 1967, the American Basketball Association was formed, and the new competition helped cause players’ salaries to rise. Recognizing this trend, the NBA soon opened discussions with the ABA over a possible merger which would eliminate this healthy competition for player services. In response, the players filed the “Oscar Robertson Suit” under the antitrust laws in 1970. Through the lawsuit, the players hoped to block the merger and also ease the burden of various other player restraints, including the option clause that bound players to a team in perpetuity.²¹

In the *Robertson* suit, a class action, players alleged violations of antitrust law through the league’s reserve clause, uniform player contract, and college draft.²² In the suit:

The NBPA [won] a restraining order to block the merger, and the owners came to the table, though not before unsuccessfully attempting to gain Congressional approval for a merger. The new [NBPA] president Paul Silas used leverage from the court victory to ink a new deal with the NBA. The new deal gave players a limited form of free agency, eliminating the option

¹³ *Robertson v. Nat’l Basketball Ass’n*, 389 F. Supp. 867 (S.D.N.Y. 1975).

¹⁴ *Wood v. Nat’l Basketball Ass’n*, 809 F.2d 954, 958 (2d Cir. 1987).

¹⁵ *Nat’l Basketball Ass’n v. Williams*, 857 F. Supp. 1069, 1071 (S.D.N.Y. 1994), *aff’d*, 45 F.3d 684 (2d Cir. 1995), *cert. denied*, 518 U.S. 1016 (1996).

¹⁶ *NBA Collective Bargaining Agreement December 2011*, NAT’L BASKETBALL PLAYERS ASS’N. (“NBPA”) <https://www.scribd.com/doc/172760974/NBA-NBPA-CBA-2011>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ NLRB Dec. 02-CB-061954 (CCH).

²⁰ *About & History*, NBPA, <http://nbpa.com/about/>.

²¹ *Id.*

²² *Robertson*, 389 F. Supp. 867.

clause in all contracts. The ABA and NBA finally merged, but by that time the collective bargaining agreement brought the players an increase in the minimum salary from \$20,000 to \$30,000, an increase in pension benefits, medical and dental coverage, All-Star Game pay, term life insurance, and a fair per diem.²³

The next suit that would arise against the NBA would be from Leon Wood, a USA Basketball Olympic gold medalist, insisting the "salary cap," college draft, and prohibition of player corporations violated Section 1 of the Sherman Act.²⁴ and were not exempt from the Sherman Act by reason of the non-statutory "labor exemption."²⁵ The court, however, dismissed the case, stating that the challenged provisions were in part the result of the settlement of the earlier antitrust action brought by players against the NBA (*Robertson*).²⁶

The next lawsuit the NBA and the players would face came in the form of yet another class action. The NBA filed suit against players seeking a declaratory judgment to continue implementation of the college draft, the right of first refusal, and the salary cap.²⁷ The NBA vigorously stated these measures were not unreasonable restraints of trade and therefore did not violate the antitrust laws.²⁸

The players, along with the National Basketball Players Association, brought counterclaims alleging the continuation of these policies were unreasonable restraints of trade not exempt from antitrust law and thereby violated the Sherman Act.²⁹ The result of this suit was that the NBA and Teams' continued implementation of the college draft, right of first refusal, and the salary cap did not violate antitrust laws.³⁰ The courts once again urged the league and the players to pursue the only rational course for the resolution of their disputes; that is, a course of collective bargaining pursued by both sides in good faith.³¹ No court, no matter how highly situated, can replace this time-honored manner of labor dispute resolution.³²

II. CURRENT COLLECTIVE BARGAINING AGREEMENT

The NBPA and the league were very optimistic when it came to reaching a new collective bargaining agreement before the December 2016 deadline.³³ This optimism would eliminate the possibility of a work stoppage in 2017.³⁴ In Adam Silver's board of governors, a few of the main issues concerning the CBA that would be discussed were higher rookie contract sale, two-way

²³ NBPA, *supra* note 20.

²⁴ 15 U.S.C. § 1 (1982).

²⁵ *Wood*, 809 F.2d at 958.

²⁶ *Id.*

²⁷ *Williams*, 857 F. Supp. at 1071.

²⁸ *Id.* at 1078.

²⁹ *Id.*

³⁰ *Id.* at 1078.

³¹ *Id.*

³² *Id.*

³³ *Report: NBA, Union Optimistic of New CBA Deal in Coming Weeks*, ESPN (October 7, 2016), http://www.espn.com/nba/story/_/id/17733810/nba-national-basketball-players-association-progressing-towards-new-collective-bargaining-agreement.

³⁴ *Id.*

contracts between the NBA and NBA Development League, and max contract sale.³⁵ There was also an opportunity for expansion teams to arise.³⁶ NBA Commissioner Adam Silver has always been fond of soccer tournament style of play, and adding two more teams to the NBA would allow this to happen.³⁷ Despite both sides being optimistic, the NBPA advised its players “to accept paychecks over a 18-month period for the 2016-2017 NBA season instead of the standard 12-month period as one mechanism to help players financially prepare for a possible work stoppage (lockout).”³⁸

There are currently three main ways that the NBA is demonstrating competitive balance among the league’s thirty teams.³⁹ The first is the draft that includes players [who at minimum] have played at least one year at the collegiate level with talent being distributed to teams in reverse-order (teams with the worst records in the previous season are given the opportunity to select higher in the draft).⁴⁰ The current structure of the NBA Draft Lottery is:

Fourteen ping pong balls numbered 1-14 in a standard lottery machine. Four balls are drawn at random to determine the winner of each of the top three picks in the Draft. The order of the numbers drawn are not important, 1-2-3-4 is considered to be the same as 3-4-2-1. Each team in the lottery is assigned a certain amount of four number combinations.⁴¹

The team with the worst record during a NBA season will get 250 out of the 1,000 number combinations available.⁴² “The team with the best record in the lottery has only five combinations.”⁴³ Only the top three picks are drawn via the lottery.⁴⁴ The remaining picks are decided by reverse order of finish.⁴⁵

Second, the league utilizes revenue sharing as an additional mechanism that attempts to produce competitive balance.⁴⁶ The NBA’s current revenue sharing plan was years in development and represents a staggering shift in league policy as the NBA redistributes wealth among its teams.⁴⁷ When fully phased in in the 2013-14 season, the league saw a stunning \$140 million in additional revenue sharing coming into play compared with the former year, moving money through a complex formula that shifts some of the financial wealth of big-market NBA teams to

³⁵ *Id.*

³⁶ Kyle Hancox, *NBA Expansion Rumors Arise As Collective Bargaining Agreement Solution Gets Closer*, GIVEMESPORT (October 14, 2016), <http://www.givemesport.com/892984-nba-expansion-rumours-arise-as-collective-bargaining-agreement-solution-gets-closer>.

³⁷ *Id.*

³⁸ Bukstein, *supra* note 9, at 373.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Grizzlies Draft Lottery Good Luck Guide*, NBA, http://www.nba.com/media/grizzlies/good_luck_guide-0705.pdf (last visited Oct. 22, 2017).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Bukstein, *supra* note 9, at 376.

⁴⁷ John Lombardo, *Inside NBA’s Revenue Sharing*, SPORTS BUSINESS DAILY (Jan. 23, 2012), <http://www.sportsbusinessdaily.com/Journal/Issues/2012/01/23/Leagues-and-Governing-Bodies/NBA-revenue.aspx>.

the league's neediest teams, each of which could receive up to \$16 million a year as part of the plan.⁴⁸

[T]he NBA has done away with its old system of requiring teams to meet a set of business performance benchmarks developed by business consultants McKinsey & Co. The new plan calls for small-market teams to generate at least 70 percent of the league-wide average in total team revenue in order to receive full revenue-sharing benefits. Large-market teams must generate 130 percent of the league-wide team revenue average. Should a team fall short of its expected revenue, it must make up the difference in its level of contribution.

The NBA's current revenue sharing plan redistributes money from teams that generate significant local revenue (e.g., "big market" teams such as the Chicago Bulls, Los Angeles Lakers, and New York Knicks) to teams that generate less local revenue (e.g., "small market" teams such as the Minnesota Timberwolves, Milwaukee Bucks, and Orlando Magic).⁴⁹

The third way the NBA attempts to produce competitive balance is the salary cap, which "limits the amount of money each team is allowed to spend on player salaries."⁵⁰

Salary caps strive to create competitive balance on the basketball court by creating competitive financial balance with respect to limiting what teams are permitted to spend on player compensation each NBA season. The league's salary cap directly impacts player salaries. The salary cap each year is calculated based on a percentage of "Basketball Related Income" ("BRI"). The NBA CBA contains a detailed formula for determining BRI, which includes most revenues earned at the league and team levels. Sources of revenue include league licensing revenue, media rights and corporate partnership agreements as well as team revenue streams such as gate receipts, local media rights deals, and team sponsorship agreements. BRI essentially indicates the financial health of the NBA. Player salaries correlate with team and league revenue.⁵¹

"A major emphasis during negotiations of the current CBA was to give every team, regardless of market size, an equal opportunity to compete for a championship."⁵² The salary cap for the 2016-17 season was \$94.1 million with the salary cap floor set at \$84.7 million.⁵³ The luxury tax line increased to \$113.3 million for the 2016-2017 season.⁵⁴

The luxury tax is a mechanism that helps control team spending. While it is commonly referred to as a "luxury tax," the CBA simply calls it a "tax" or a "team payment." It is paid by high spending teams -- those with a team salary exceeding

⁴⁸ *Id.*

⁴⁹ Bukstein, *supra* note 9, at 376-77.

⁵⁰ Bukstein, *supra* note 9, at 377.

⁵¹ Bukstein, *supra* note 9, at 377-78.

⁵² MacMahon, *supra* note 8.

⁵³ Ben Golliver, *NBA Announces Record Salary Cap for 2016-17 After Historic Climb*, SPORTS ILLUSTRATED (July 2, 2016), <http://www.si.com/nba/2016/07/02/nba-salary-cap-record-numbers-2016-adam-silver>.

⁵⁴ *Id.*

a predetermined tax level. These teams pay a penalty for each dollar their team salary (with a few exceptions, see below) exceeds the tax level.⁵⁵

The new salary cap figure is \$24.1 million more than the 2015-16 salary cap, representing a record increase for a single season.⁵⁶ The NBA's salary cap has never previously risen by more than \$8 million in the modern era.⁵⁷ The current collective bargaining agreement has the framework of a soft cap, which has exceptions that allow teams to surpass both the salary cap and luxury tax threshold, which comes with incremental increases in tax depending on how far a team goes above the cap.⁵⁸

III. NEW COLLECTIVE BARGAINING AGREEMENT

A. NBA Draft Lottery

There have been many debates over the years about the structure of the NBA Draft lottery system.⁵⁹ The objective of the draft lottery is to create a level playing field as described above but some teams perform horribly during the season to ensure a high lottery pick.⁶⁰ One alternative to the lottery draft system is:

[T]he “lottery wheel,” a 30-year rotation with a different team picking first every year and no team picking more than once. This idea has been revamped to a five-year rotation, in which teams are grouped with five other teams, and, depending on the record, the worst team would get the highest pick in the group.⁶¹

Another alternative to the lottery draft system is to eliminate it completely.⁶² The draft has obvious flaws like teams tanking during the season to secure a top draft pick and top players getting stuck in situations that are not ideal for their career.⁶³ With so many flaws stemming from the current draft/lottery process, the NBA could implement a new system that has rookies enter as free agents.⁶⁴ “[T]he team with the most salary cap space can offer the most” money and the teams that have reached their maximum salary cap space get no picks.⁶⁵ The worst teams would have the

⁵⁵ *Salary Cap*, CBA FAQ (last visited Oct. 22, 2017), <http://www.cbafaq.com/salarycap.htm#Q21>.

⁵⁶ Golliver, *supra* note 60.

⁵⁷ *Id.*

⁵⁸ Kevin Zimmerman, *NBA Could Push For Hard Salary Cap In Next CBA*, SB NATION (Aug. 8, 2013, 5:22 PM) <http://www.sbnation.com/nba/2013/8/8/4603284/nba-salary-cap-cba-adam-silver-brooklyn-nets> (“I would say it's no secret that we went into collective bargaining seeking a hard cap,” NBA deputy commissioner Adam Silver - one of the main architects of the current CBA and who will replace David Stern as commissioner when Stern steps down Feb. 1 - told The Post Wednesday. “So, for the long-term health of the league, we would rather do more to level the playing field among our teams, so the teams that have disparate resources are all competing with roughly the same number of chips so to speak.”).

⁵⁹ Bryce Olin, *NBA: Eliminating Tanking By Ending The NBA Draft*, FANSIDED, <http://fansided.com/2014/08/08/nba-eliminating-tanking-ending-nba-draft/> (last visited Oct. 10, 2017).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Hype Machine, Comment to Alternatives to the Lottery*, NBADRAFT.NET (Apr. 13, 2016, 10:20 PM), <http://www.nbadraft.net/forum/alternatives-lottery>.

⁶⁵ *Id.*

larger budget to sign the best rookies, but those players would not be bound to the team that drafts them.⁶⁶ The player would have the opportunity to sign with better franchises, coaches, and teammates for less money.⁶⁷ This does not fix the competitive balance problem because there is the possibility of a highly sought-after player deciding to take less money to join a powerhouse team.⁶⁸

None of the above-mentioned alternatives fix the competitive balance issue at hand.⁶⁹ “The new system should eliminate tanking while still enabling bad teams to get better through the draft without enabling already good teams to stockpile even more talent.”⁷⁰ Therefore, the NBA should consider equally weighing the lottery, which gives each team the same odds at getting picks.⁷¹ “Part of the philosophy behind every major sports draft is the concept of improving competitive balance: the goal is to bring up the bottom of the league and to make it harder for good teams to continue to dominate.”⁷² This is how the equally weighing system would work:

Assign equal weight to all lottery odds, so that each team would have an equal chance to receive any lottery pick, with two exceptions. First, teams that finish in the bottom four of the league three years in a row are guaranteed a top five pick (but still receive only an equal chance at any of those top five picks as any other team). Second, teams that get a top five pick two years in a row are ineligible to receive top five picks for the next two years. . . Truly bad teams are prevented from repeatedly missing out on top picks year after year, because if they bottom out three years in a row, they are guaranteed to get a top five pick.⁷³

This system will ensure that no one team will stockpile elite draft talent year after year because there will be provisions where any team that happens to get two consecutive top five picks cannot get one again for another two years.⁷⁴ This system is easy to implement because all the league has to do is alter the lottery odds and it can be implemented without altering the current system of trading picks; “so teams would still be able to protect picks depending on where they fall.”⁷⁵

B. Revenue Sharing

⁶⁶ Ryan Glasspiegel, *Mark Cuban Proposes Alternative to NBA Draft Lottery, Is It a Good Idea*, THE BIG LEAD (Feb. 26, 2016) <http://thebiglead.com/2016/02/26/mark-cuban-proposes-alternative-to-nba-draft-lottery-is-it-a-good-idea/>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Ian Gunn, *Improving The NBA's Competitive Balance By Fixing The NBA Draft*, THE SPORTS ESQUIRES (June 23, 2015), <http://thesportsesquires.com/improving-the-nbas-competitive-balance-by-fixing-the-nba-draft/>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Gunn, *supra* note 76.

“The salary cap is a necessity in a league where teams from Oklahoma City and Memphis must compete with teams from New York and Los Angeles.”⁷⁶ Revenue sharing ensures that all teams have a fair and balanced opportunity to recruit the best players.⁷⁷

C. Salary Cap

The NBA wants to implement a hard salary cap in this upcoming collective bargaining agreement because they fought for it with this current collective bargaining agreement and did not meet its goal.⁷⁸ “A hard cap would make it impossible for any team to have a team salary more than a given total.”⁷⁹ The salary cap for the 2017-2018 season is \$99.093 million.⁸⁰ A hard salary cap will help with the competitive balance and parity issue in the NBA because it will ensure that teams do not surpass the allotted salary cap.⁸¹

D. Potential Franchise Tag System

The National Football League (“NFL”) currently has a franchise tag system, which has been described as follows:

The franchise tag is more or less a last resort for teams trying to retain their best unrestricted free agents. It's essentially a one-year deal that grants a window to negotiate a long-term contract. If no deal is struck before July 15, the player gets locked into his one-year deal. The price is based on the average of the top five salaries from the player's position or 120 percent of his previous salary, whichever number is higher. Needless to say, teams will try to avoid tagging quarterbacks and pass rushers because those positions tend to be the most expensive.

There are two types of franchise tags: exclusive and non-exclusive. The exclusive tag is the one described earlier with only the original team allowed to negotiate with the player. The non-exclusive tag allows other teams to negotiate with the original team given the choice to match any offer. If the original team chooses not to match an offer, it receives two first-round picks as compensation. The transition tag is similar to non-exclusive, except the original team gets no compensation if it doesn't match the offer.⁸²

The NBA should propose a franchise tag system similar to that of the NFL's to eliminate star players from leaving small market teams to join large market teams.⁸³ If the goal of the NBA is to provide equal opportunity to all thirty teams in the league at winning a championship, they

⁷⁶ Kevin Arnovitz, *Why Bigger Pie Is Not Enough For All*, ESPN (July 14, 2015) http://www.espn.com/nba/story/_/id/13258707/even-revenue-pie-gets-bigger-some-get-enough.

⁷⁷ *Id.*

⁷⁸ Zimmerman, *supra* note 65.

⁷⁹ *Id.*

⁸⁰ NBA, <http://www.nba.com/article/2017/07/01/nba-salary-cap-set-2017-18-season-99093-million/>.

⁸¹ Zimmerman, *supra* note 65.

⁸² Jon Benne, *What Is The NFL Franchise Tag And How Does It Work?*, SB NATION (Feb. 29, 2016, 10:17 AM), <http://www.sbnation.com/nfl/2016/2/16/10956324/nfl-free-agency-2016-franchise-tag-definition-value-candidates>.

⁸³ *Id.*

have to prevent super teams from developing and this is one way to do so.⁸⁴ Players are concerned with having the talent on their roster to compete for a championship.⁸⁵ Implementing this system allows teams to keep “star” players and leaves them with enough revenue to go after more talent.⁸⁶

IV. LEGAL REMEDIES AVAILABLE TO PLAYERS AND THE LEAGUE

During the last collective bargaining agreement process between the player’s association and the league, the player’s association filed a complaint with the National Labor Relations Board (“NLRB”) alleging that the NBA was failing to negotiate in good faith.⁸⁷ The NBPA accused the league of making “harsh, inflexible and grossly regressive takeaway demands,” “failing to ‘provide relevant financial information,’ ‘repeatedly threatening’ to lock out the players[,] and ‘making demands and threats that are inherently destructive of the collective bargaining process.’”⁸⁸ Once the league and the union failed to reach an agreement before the deadline, the NBA commenced a lockout of its players.⁸⁹

A few months later, the NBA decided to file its own complaint with the NLRB, claiming that the NBPA had failed to collectively bargain in good faith.⁹⁰ The NBA also alleged that the NBPA had engaged in the “impermissible negotiating tactic” of threatening to decertify (or disclaim interest in) representing players and subsequently file an antitrust lawsuit as a means to create leverage in the collective bargaining process.⁹¹ The NBA also filed a lawsuit asking a federal court to rule that the league’s lockout was protected by the non-statutory labor exemption and therefore did not violate antitrust laws.⁹² Eventually the NBPA disclaimed its status as the NBA players’ collective bargaining representative.⁹³ NBA players then filed two lawsuits in federal court alleging that the NBA was in violation of antitrust laws because the league refused to allow players to work.⁹⁴ Within two weeks of the players filing antitrust lawsuits, the NBA and its players had a tentative agreement in place on November 26, 2011.⁹⁵ All of these legal remedies are

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Bukstein, *supra* note 9, at 388

⁸⁸ See Howard Beck, *Turning to Labor Board, N.B.A. Union Fires First*, N.Y. TIMES (May 24, 2011), http://www.nytimes.com/2011/05/25/sports/basketball/players-accuse-nba-of-failing-to-bargain-in-good-faith.html?_r=0.

⁸⁹ Bukstein, *supra* note 9, at 388

⁹⁰ *Id.* at 389.

⁹¹ *Id.*

⁹² See Class Action Compl. for Decl. Relief at 2, ¶ 1, NBA v. NBPA, No. 11-cv-05369, (S.D.N.Y. Aug. 2, 2011).

⁹³ See *NBA Union Letter Sent to Players Monday*, USA TODAY, <http://usatoday30.usatoday.com/sports/story/2011-11-14/NBA-union-letter-sent-to-players-Monday/51206352/1> (last visited Oct. 22, 2017) (providing letter from G. William Hunter, Derek Fisher, and the NBPA Executive Committee to all players, dated Nov. 14, 2011, explaining that “[f]or two and a half years and through more than 50 collective bargaining sessions, we sat at the table and attempted to negotiate a fair labor agreement with the owners . . . It has become clear to us that we have exhausted our rights under the labor laws, and continuing in that forum would not be in the best interest of the players”).

⁹⁴ See, e.g., Class Action Compl. and Jury Demand of Pl. at 3, ¶ 5, Anthony v. NBA, No. C11-05525, (N.D. Cal. Nov. 15, 2011) (alleging the NBA was engaged in an illegal “group boycott and price fixing system to reduce the salaries, terms, benefits, and conditions of employment available in the market for players”).

⁹⁵ See Bukstein, *supra* note 9, at 391, (citing David J. Berri, *Did the Players Give Up Money to Make the NBA Better? Exploring the 2011 Collective Bargaining Agreement in the National Basketball Association*, 7 INT’L J. SPORT FIN. 158, 169 (2012), (expressing the viewpoint that NBPA lawsuits “seems to have moved the parties together. It most

available to the league and the players during this upcoming collective bargaining agreement process.⁹⁶

CONCLUSION

The goal of the NBA is to have a competitive league and the goal of the players is to have the best opportunity to win a NBA championship. It is important to the league to maintain competitive balance and parity because they want to engage fans and keep sponsors happy. With the negotiations of the collective bargaining agreement commencing in December 2016, both parties had to sit down and come to an understanding of each parties' wants and needs. Adam Silver has made it clear that the current atmosphere of the NBA with players joining together to create super teams is not in the best interest of the league's parity,⁹⁷ and that issue will be ongoing in all future collective bargaining agreements.



certainly called the NBA's bluff, in that the league's regressive or inferior option was quickly forgotten"); *see also NBA Commences Lockout*, NBA (June 30, 2011), <http://pr.nba.com/nba-lockout-2011/> (stating that in event of lockout, NBA players would not receive salary compensation and would not be allowed to use team facilities for any purpose; and teams would not be allowed to negotiate player contracts or conduct any practices or similar sessions with players).

⁹⁶ *Id.*

⁹⁷ *See* McMahon, *supra* note 8.